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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 UNITED STATES OF AMERICA,

Case No. 2:19-mj-00882-DJA

7 Plaintiff,

**ORDER**

8 v.

9 VINCENT S. CLARDY,

10 Defendant.

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12 This matter is before the Court on Defendant Vincent S. Clardy's Motion to Dismiss (ECF  
13 No. 3), filed on December 4, 2019. The Government filed a Response (ECF No. 4) on December  
14 9, 2019. Clardy filed a Reply (ECF No. 8) on December 19, 2019. The Court held a hearing for  
15 argument on the motion on January 8, 2020 (ECF No. 19) and took the matter under advisement.  
16 This Order follows.

17 **I. BACKGROUND**

18 Clardy is charged in a one count Complaint with disorderly conduct in violation of 41  
19 C.F.R. §102-74.390. (ECF No. 1). The Government alleges that Clardy engaged in disorderly  
20 conduct in the Clerk's Office and the United States Marshals Service's office in the Lloyd D.  
21 George United States Courthouse ("courthouse") by yelling obscenities, racist and abusive  
22 language, and forcing Deputy United States Marshals to physically lift him and carry him out of  
23 the courthouse. (*Id.*).

24 According to the Complaint<sup>1</sup>, Clardy entered the courthouse and went to the Clerk's  
25 Office. Once there, he began yelling various obscenities at the intake clerk because he felt he was  
26 not given the proper paperwork to file a civil case. In an attempt to assist Clardy, a Court

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28 <sup>1</sup> The facts outlined in the following two paragraphs are taken from the Complaint (ECF No. 1).

1 Security Officer spoke with the front desk intake clerk asking the clerk to get Clardy whatever  
2 paperwork he needed. As the clerk was attempting to print paperwork he thought Clardy needed,  
3 Clardy again began to use abusive, foul language and racial slurs, at which point the Court  
4 Security Officer radioed for United States Marshals' assistance. Shortly thereafter, United States  
5 Marshals and Federal Protective Service officers arrived at the Clerk's Office. Clardy became  
6 very upset and again used inappropriate language, cussing and using racial slurs toward the U.S.  
7 Marshals. The U.S. Marshals Service employees made several attempts to calm Clardy down, but  
8 he remained belligerent.

9 Due to his belligerence, Clardy was instructed to leave. He refused. At this point, officers  
10 restrained and handcuffed Clardy and escorted him to a cell block in the United States Marshals'  
11 office to remove him from the public intake area of the Clerk's Office. Clardy was then cited for  
12 disorderly conduct and provided with paperwork and an explanation as to how to handle the  
13 citation. Clardy refused to sign the citation and began to yell vulgarities at the marshal. The  
14 marshal responded by telling Clardy he was free to go. Clardy refused to leave and lay down on  
15 the ground and made his body limp. Four deputy United States Marshals were required to pick  
16 Clardy up and place him in a wheelchair and escort him out of the building.

17 Clardy moves to dismiss the Complaint setting forth four arguments: (1) that the statute  
18 under which he is charged is unconstitutionally facially vague; (2) that it is unconstitutionally  
19 vague as it is applied to Clardy's conduct; (3) that it is overbroad; and finally, (4) that it is a  
20 constitutionally excessive delegation of legislative authority. (ECF No. 3). The Government  
21 responds that the statute is neither vague facially nor as applied to Clardy. (ECF No. 4). The  
22 Government further argues that the statute is not overbroad. (*Id.*). Finally, the Government  
23 responds that the regulation is an appropriate exercise of an executive authority under the  
24 Property Clause of the Constitution. (*Id.*). Clardy replies that the statute is vague as applied  
25 despite the four types of conduct listed in the statute and that it is facially vague despite two  
26 unpublished opinions deciding otherwise. (ECF No. 8). Likewise, he contends that the statute is  
27 overbroad despite the Government's citation to a case ruling to the contrary. (*Id.*). Finally, Clardy  
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1 argues that the statute is an unconstitutionally excessive delegation of legislative authority despite  
2 the Government's authority under the Property Clause. (*Id.*).

3 At the hearing held before the Court on the motion to dismiss, the parties argued  
4 essentially what was contained in their pleadings. (ECF No. 19). Of note, Clardy submitted his  
5 argument regarding the delegation of authority on the briefing and provided no further oral  
6 argument on that issue. (*Id.*).

## 7 **II. DISCUSSION**

### 8 **A. The Regulation Charging Clardy with Disorderly Conduct Is Neither Vague on** 9 **Its Face Nor as Applied to Clardy's Facts.**

10 The relevant regulation, 41 C.F.R. §102-74.390, provides:

11 All persons entering in or on federal property are prohibited from loitering, exhibiting  
12 disorderly conduct or exhibiting other conduct on property that –

- 13 (a) Creates loud or unusual noise or a nuisance;
- 14 (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors,  
15 offices, elevators, stairways, or parking lots;
- 16 (c) Otherwise impedes or disrupts the performance of official duties by government  
17 employees; or
- 18 (d) Prevents the general public from obtaining the administrative services provided on  
19 the property in a timely manner.

20 41 C.F.R. §102-74.390.

21 In *United States v. Lawrence*, 775 F.App'x 703, 704 (9th Cir. 2019), the Ninth Circuit  
22 utilized the doctrine of constitutional avoidance to find that subsections (a) through (d) modified  
23 all three types of conduct cited in the regulation: loitering, disorderly conduct, and other conduct.  
24 The Complaint alleges that Clardy engaged in disorderly conduct by "yelling obscenities, racist  
25 and abusive language, and forcing Deputy United States Marshals to physically lift him and carry  
26 him out of the courthouse". (ECF No. 1 at p. 1). Given these allegations, the Government argues  
27 it is charging Clardy with "disorderly conduct" rather than the "other" conduct category. The  
28 probable cause affidavit for the Complaint makes more specific factual allegations regarding  
Clardy's behavior, which again fit under the same disorderly conduct category.

1 Clardy argues that the words “loitering,” “disorderly conduct,” and “other” would serve  
2 no purpose if subsections (a)-(d) apply equally to all three. (ECF No. 3). As such, he contends  
3 that Congress must have intended only subsections (a)-(d) to apply just to define “other” conduct.  
4 Clardy claims that he is charged with “disorderly conduct” and not the other conduct term. As  
5 disorderly conduct is not defined in the regulation, under Clardy’s theory that (a)-(d) do not apply  
6 to disorderly conduct, then he contends that the regulation does not give fair notice and it is vague  
7 as applied to him. Alternatively, Clardy argues that the phrase “disorderly conduct” is facially  
8 vague because there is no specific definition in the regulation so there is no objective standard of  
9 conduct.

10 The Court is not persuaded by Clardy’s interpretation as it requires the Court to contort  
11 the statutory text beyond what is plausible, especially when there is a reasonable alternative.  
12 Indeed, the Court agrees with the Ninth Circuit’s interpretation in *Lawrence* and finds that the  
13 statute is not unconstitutionally vague pursuant to the doctrine of constitutional avoidance, such  
14 that the statute must be interpreted to avoid constitutional difficulties. 775 F.App’x 703. It finds  
15 that subsections (a)-(d) do identify the four types of conduct that fall within the “disorderly  
16 conduct” category and those subsections do not just apply to “other” conduct. Therefore, the  
17 facial vagueness challenge is not successful as the conduct is clearly proscribed in the statutory  
18 text.

19 Clardy’s as applied challenge similarly fails because it is clear to any reasonable person  
20 that threatening a court employee and marshals with loud, vulgar language constitutes disorderly  
21 conduct. Indeed, any reading of “disorderly conduct” would encompass Clardy’s profane  
22 language and bodily actions. Therefore, his as-applied challenge is also rejected by the Court and  
23 the Court finds that the regulation is not unconstitutionally vague.

24 **B. The Regulation is Not Overbroad.**

25 Clardy argues that because the definition of “disorderly” may vary from one person to the  
26 next, it risks being arbitrarily enforced. He claims that it assigns criminal liability by mere  
27 reference to conduct considered disorderly thereby making the statute invalid as constitutionally  
28 overbroad. (ECF No. 3, p. 8). As the Court has found that the “disorderly conduct” category is

1 limited to conduct within one of the enumerated subsections, Clardy's overbreadth argument also  
2 fails.

3 Clearly, Congress has the authority to regulate non-speech conduct in a federal  
4 courthouse. *See, e.g., United States v. Gilbert*, 813 F.2d 1523, 1529 (9th Cir. 1987); *United States*  
5 *v. Stansell*, 847 F.2d 609, 614 (9th Cir. 1988). "Rarely, if ever, will an overbreadth challenge  
6 succeed against a law or regulation that is not specifically addressed to speech or to conduct  
7 necessarily associated with speech (such as picketing or demonstrating)." *Virginia v. Hicks*, 539  
8 U.S. 113, 124, 12 S.Ct. 2191, 156 L. Ed.2d 148 (2003); *see also United States v. Brice*, 926 F.2d  
9 925, 931 (9th Cir. 1991).

10 Moreover, as the *Brice* court noted, incidental restrictions on freedom of speech are not  
11 constitutionally invalid when prohibited conduct has both speech and non-speech elements and  
12 Congress has the authority to regulate the non-speech conduct. 926 F.2d at 930. While using  
13 profanity can be protected speech, that does not render the statute in question here  
14 unconstitutionally overbroad because a portion of the statute regulates profanity and yelling  
15 obscenities. Here, the Court finds that the restriction on Clardy's speech was at most incidental.  
16 As such, the Court will not find the statute unconstitutionally overbroad and will deny Clardy's  
17 motion to dismiss on this basis.

18 **C. The Regulation is Not a Constitutionally Excessive Delegation of Legislative**  
19 **Authority.**

20 Finally, Clardy argues that the statute under which he is charged is a constitutionally  
21 excessive delegation of legislative authority. Clardy appears to argue that the charge should be  
22 dismissed because by enacting the regulation, the Executive Branch overstepped its authority  
23 without any oversight from Congress. (ECF No. 3, p. 10). Clardy provides little authority or  
24 analysis for this rather novel argument, and indeed submitted this issue on the briefs at the time of  
25 oral argument. The Court does not find Clardy's argument persuasive.

26 41 C.F.R. §102-74.390 falls squarely within the Executive Branch's authority to regulate  
27 conduct on its property. The Executive Branch of the federal government may, under the  
28 Property Clause of the Constitution, promulgate regulations to protect its property. U.S. Const.

1 Art. 4, § 3; *see, e.g., United States v. Bohn*, 622 F.3d 1129, 1134 (9th Cir. 2010) (quoting *Kleppe*  
2 *v. New Mexico*, 426 U.S. 529, 541-42 (1976)). It is well settled law that these regulations can  
3 provide criminal penalties so long as the empowering statute provides that a violation of that  
4 regulation is a crime. *See United States v. Alghazouli*, 517 F.3d 1179, 1185 (9th Cir. 2008) (citing  
5 *United States v. Grimaud*, 220 U.S. 506, 519 (1911); *see also Loving v. United States*, 517 U.S.  
6 748, 768 (1996)).

7 Under 40 U.S.C. §1315, the Secretary of the Department of Homeland Security, in  
8 partnership with the Administrator of the United States General Services Administration, are  
9 empowered to regulate conduct at GSA-managed federal facilities. The statute specifically  
10 provides for the criminalization of behavior that violates these regulations. 40 U.S.C. §§ 1315(c)  
11 (1-2). The regulation itself limits the available penalty to that set forth in the statute. 41 C.F.R.  
12 §102-74.450. Thus, despite the existence of a criminal penalty for violating 41 C.F.R. §102-  
13 74.390, its promulgation does not constitute an unauthorized delegation of legislative authority.  
14 For these reasons, Clardy's motion to dismiss the charge because the regulation is a  
15 constitutionally excessive delegation of legislative authority is denied.

### 16 **III. CONCLUSION**

17 IT IS HEREBY ORDERED that Defendant Vincent Clardy's Motion to Dismiss (ECF  
18 No. 3) is **denied**.

19 DATED: May 12, 2020.

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21 \_\_\_\_\_  
22 DANIEL J. ALBREGTS  
23 UNITED STATES MAGISTRATE JUDGE  
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